

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**NEVA HENDERSON**  
Facility #60828  
Hamilton County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2009-AFO- 06

TO: Neva Henderson  
3765 Vail Avenue  
Story City, Iowa 50248

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Neva Henderson for the purpose of resolving issues surrounding a manure discharge at the Henderson's facility and the resulting fish kill in an unnamed tributary of Skunk River. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Dale Adams, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> St. S.W.  
Mason City, Iowa 50401  
Phone: (641) 424-4073

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Neva Henderson owned a swine confinement feeding operation located at 3747 Vail Avenue, Story City, Iowa (S ½ of the NE ¼ of the SE ¼ of Section 19, Scott Township, Hamilton County, Iowa). The facility consists of three wean to finish swine buildings with a total capacity of 3,300 head. The facility has an earthen storage basin.

2. On November 3, 2007, DNR Field Office 2 was notified of a fish kill in an unnamed tributary of the Skunk River. Dale Adams, DNR Field Office 2 environmental specialist, investigated the fish kill. Mr. Adams began his investigation at a tributary of the Skunk River in the SE ¼, SW ¼, Section 19, Scott Township in Hamilton County. This area is north of 380<sup>th</sup> Street and west of Interstate 35. Mr. Adams observed dead fish and discolored water. He also noted a manure odor. Laboratory samples indicated an ammonia level of 79 mg/L.

3. Mr. Adams proceeded north along Vail Avenue to sample the stream at a road crossing on Vail Avenue. As Mr. Adams passed the Henderson facility he noted an earthen storage basin so he went to the facility to look at it. Mr. Adams went to the Henderson facility and observed liquid manure being released from a clean out pipe at the facility. Mr. Adams observed that the slats in the confinement building were being soaked by a sprinkler system to aid in cleaning the slats. The pipe draining the shallow pits to the earthen basin became plugged and manure liquids were discharged out a clean out pipe. No one was present. Mr. Adams observed the manure traveling around the basin toward the unnamed tributary. Mr. Adams observed the manure entering the tributary. Mr. Adams went upstream of the discharge and collected laboratory samples. The laboratory samples indicated an ammonia level of 0.12 mg/L.

4. Mr. Adams contacted Mark Henderson, an employee of Neva Henderson, and informed him that there was a release at Ms. Henderson's facility and that it would need to be cleaned immediately. David Henderson, manure applicator at the site, capped the pipe where manure was discharging from and a dam was immediately placed upstream of the unnamed tributary.

5. On November 5, 2007, Mr. Adams returned to the facility and noted that the clean up was almost complete and the earthen dam was still in place. On November 19, 2007, Mr. Adams told Mr. Henderson to pump the stream behind the dam one more time and then remove the dam.

6. On November 30, 2007, DNR issued a Notice of Violation letter to Neva Henderson for the violations discovered on November 3, 2007. The letter cited the following violations: failure to maintain minimum manure controls and violations of the general water quality criteria. The letter informed Ms. Henderson that the matter may be referred for further enforcement.

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7. The fish kill evaluation by the DNR Fisheries personnel concluded that 1,100 fish were killed. The total fish kill assessment totals \$493.58

8. Ms. Henderson has previous knowledge of the DNR's animal feeding operation regulations. In December 2004, Ms. Henderson was issued a Notice of Violation letter for failing to produce manure application records. In August 2006, Ms. Henderson was issued a Notice of Violation letter for failing to produce manure application records.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. The Henderson facility does not have a permit and DNR Field Office 2 found evidence of a discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

3. Iowa Code section 459.311(1) and 567 IAC 65.2(3) state the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. Manure from the Henderson facility was discharged from the facility and traveled to an unnamed tributary of the Skunk River. The above-facts disclose a violation of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The field staff observed discolored water with a manure odor as well as dead fish. The above-facts disclose a violation of one or more of these criteria.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC Chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge at the Henderson facility.

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**V. ORDER**

THEREFORE, it is hereby ordered and Neva Henderson agrees to do the following:

1. Neva Henderson or her employee shall place caps on all clean out pipes at the facility and shall have someone on site when slats are being soaked for cleaning. Both of these actions shall begin immediately;
2. Neva Henderson shall pay restitution in the amount of \$493.58 within 30 days of the date the Director signs this administrative consent order; and
3. Neva Henderson shall pay a penalty of \$1,500.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order to Neva Henderson with an administrative penalty of \$1,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure allowed Ms. Henderson to save time and money. However, any economic benefit she received was minimal because of the actions taken following the discharge to prevent further impact on the unnamed tributary. Therefore, no economic benefit is being assessed in this administrative consent order.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by the impact to the unnamed tributary of the Skunk River, including over 1,000 dead fish. The manure control and water quality violations threaten the integrity of the water quality program. Based on the above considerations, \$1,000.00 is assessed for this factor.

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Culpability – Ms. Henderson has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that her conduct is subject to DNR's rules. Based on the above considerations, \$500.00 is assessed for this factor

**VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Neva Henderson. For that reason, Neva Henderson waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191

  
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RICHARD A. LEOPOLD  
Iowa Department of Natural Resources

Dated this 4 day of  
March, 2009.

  
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NEVA HENDERSON

Dated this 20<sup>th</sup> day of  
February, 2009.

#60828; Kelli Book; Field Office 2; Ken Hessenius; Gene Tinker; EPA; I.C.1 and VIII.D.1.a